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Report of the Intergovernmental Group of Experts on Competition Law and Policy on its first session

held at the Palais des Nations, Geneva,
from 29 to 31 July 1998

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INTRODUCTION

1. The Intergovernmental Group of Experts on Competition Law and Policy held its first session at the Palais des Nations, Geneva, from 29 to 31 July 1998.

2. In the course of its session, it held two plenary meetings and a number of informal meetings.

Opening statements

3. The **Deputy Secretary-General of UNCTAD** said that this session of the Intergovernmental Group of Experts on Competition Law and Policy should be seen as a continuation of the Intergovernmental Group of Experts on Restrictive Business Practices, which had held 14 sessions from 1981 to 1995 and the two Expert Meetings on Competition Law and Policy in November 1996 and November 1997. Since this last meeting the General Assembly, in its resolution 52/182 of December 1997, in accordance with the recommendation of the Trade and Development Board, had endorsed the change of name of the Intergovernmental Group of Experts on Restrictive Business Practices to the Intergovernmental Group of Experts on Competition Law and Policy, as had been initially recommended in November 1995 by the Third United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. Meanwhile, the issue of competition law and policy had continued to attract much attention at both national and international levels. An indication of this interest at the national level was the substantial technical cooperation taking place in this area, and the accelerating rate of requests for UNCTAD to provide such cooperation at the national, regional and subregional levels, including by holding seminars, helping to prepare legislation and set up institutional machinery, and training personnel. Since the Expert Meeting in November 1997, many of UNCTAD's activities had focused on Africa, as requested in paragraph 91 (iii) of "A Partnership for Growth and Development", adopted at UNCTAD IX. The speaker took this opportunity to express appreciation to the Governments of the Netherlands and Norway for their financial support for UNCTAD's technical cooperation activities in the area of competition law and policy.

4. He emphasized and expressed satisfaction with the intensive cooperation taking place between UNCTAD and the WTO, and he referred in this respect to the jointly sponsored symposiums on competition issues organized with the secretariats of the WTO and the World Bank.

5. He concluded by indicating that the time had come for the Intergovernmental Group of Experts to initiate the preparatory process for the Fourth United Nations Review Conference, which was scheduled to meet in the year 2000, and that it would be appropriate to review the progress and future directions of the Intergovernmental Group of Experts in connection with the Third and Fourth Review Conferences, in the light of the mid-term review of UNCTAD's intergovernmental machinery which was currently under way, and which would contribute to the preparations for UNCTAD X.

General statements

6. The expert from **Norway** introduced the Guidelines for Intervention against Acquisition of Enterprises, recently adopted by the Norwegian Competition Authority. They aimed at clarifying assessment criteria, securing equal treatment and creating predictability for businesses with respect to interventions against acquisitions. By setting out all the conditions relating to interventions and the step-by-step procedures followed, they enabled the Authority to maintain high analytical standards and to avoid unnecessary discussions with enterprises.

7. The expert from the **European Commission** welcomed the ongoing cooperation in the area of competition law and policy between UNCTAD and other international organizations, particularly the WTO, in line with the Singapore Ministerial Declaration. The latest example of the usefulness of such cooperation was the success of the Symposium recently organized by these two organizations and the World Bank. UNCTAD had recently been granted observer status by the OECD Committee on Competition Law and Policy. He linked the subjects which would be discussed during the forthcoming consultations to the discussions being held in the WTO, suggesting that positive comity should be multilateralized, that the question of sanctions was relevant to possible multilateral obligations to ensure the effectiveness of competition laws, and that abuses of dominance were linked to predatory and discriminatory pricing, and to excessive pricing, particularly as regards access to essential facilities.

8. The representative of **Kenya** expressed her gratitude to UNCTAD for the technical support and the training course provided to the Kenyan Competition Agency. She said that it had acquired valuable insights and information from that course, organized in Nairobi in January 1998. The contribution of experts from other African countries was of great value to the staff of the agency. In this connection, she mentioned the assistance provided by Japan for the training of an official from the Kenyan Monopolies and Prices Commission.

9. In reviewing the experience of her country she outlined some of the inadequacies and inconsistencies during the first nine years of implementation of the competition law. She added that in line with the evolution of Kenya's economic situation, a list of amendments had been drafted for inclusion in a revised law to be renamed the Competition and Fair Trade Act. She also said that one of the major priorities for the Kenyan Monopolies and Prices Commission was the advocacy role, which it planned to perform more intensely in order to publicize its activities and convince the public at large of the merits of competition. Lastly, she informed the meeting about a regional meeting which Kenya planned to host in March 1999, and looked forward to close cooperation with UNCTAD in organizing this event.

10. The representative of **Croatia** informed the meeting about recent developments in the field of competition law and policy in her country. The competition law had been passed in 1995 and had become operational in 1997. It contained provisions prohibiting restrictive agreements as well as abuses of dominance or monopolization. Block exemption regulations, similar to those operating within the European Union, regulated certain types of practices, including franchising, and selective and exclusive distribution. The law also included a merger review system which had similarities with the European Union's merger control framework. Fifty cases had been examined during its first year of activity and 50 more during the first half of 1998. The Croatian competition authority was an independent body with an autonomous budget. Its director was appointed by Parliament and reported to it on an yearly basis. All decisions were made public through press releases.

11. The representative of **Italy** noted that in its current form the Commentary to the Model Law presented the analysis of interchangeability of use and that of cross-elasticity of demand as two different, although complementary, approaches to market definition. This seemed somewhat misleading since it might lead to confusion between the concept of relevant market and its application in practice. The price test was, above all, a device to clarify the concept of relevant market. The analysis of interchangeability of use and that of cross-elasticity of demand were not really two complementary approaches to market definition but, rather, two of the many possible useful sources of information to be used for market definition. She suggested that some reference could be made in the Commentary to the Model Law to the recently published European Commission notice on market definition, which covered the theoretical as well as the practical aspects of market definition in a very clear manner.

12. The representative of **Tunisia** reported on recent developments in the implementation of the Tunisian competition law. He said that the basic thrust of the law was to be coherent and consistent with the country's overall economic policy as well as to be compatible with Tunisia's international commitments, including those under the WTO and the European Union. He informed the meeting about some of the amendments to the law. He said that the experience so far with the enforcement of the law showed that competition culture was essential for the successful implementation of competition law, that the latter had to be global in nature and to have a minimum number of exceptions (if any), and that training and acquisition of new skills were essential for handling the day-to-day work of enforcement. He concluded by expressing the wish for the creation of a regional training centre that could respond to some of these needs.

13. The representative of **China** described the situation in his country in the area of competition law and policy, the elaboration of which had been emphasized since the introduction of economic reforms leading to the development of a market economy. The Competition Law, which had been introduced in 1993, would require further revision. This was because while it dealt with unfair competition, it also included certain antimonopoly articles in the light of the real situation of the market, but these were not complete and systematic, and would require further improvements after the law had been implemented for a certain period. The development of the market required appropriate treatment of the relationship between industrial policies and competition policies, and this was illustrated by the situation in the Chinese telecommunications sector, where the introduction of competition had led to the advancement of development and benefits for consumers.
The experience acquired in this sector could play an important role in the elaboration of antimonopoly legislation. Finally, he expressed gratitude for UNCTAD's technical support and described some of its benefits.

14. The representative of **Morocco** expressed his satisfaction with the rich and lively debates at the joint UNCTAD/WTO/World Bank Symposium held on 25 July 1998 and the Cairo meeting in March 1998. Turning to the substantive issues to be discussed during the present meeting, he said that a comparative table of the sanctions and remedies contained in all existing competition legislation could help the meeting in its discussions and should be prepared. In addition, he reported on the sanctions provided for in the Moroccan legislation. Finally, he said that effective enforcement of competition legislation required close international cooperation among member countries.

15. The representative of **Zambia** informed the meeting about developments since the introduction of Zambia's Competition and Fair Trading Act in 1994 and the establishment of an independent Competition Commission in 1997. He said that the main challenge for the latter was the creation of a competition culture among both enterprises and consumers. The new law was comprehensive in its coverage and was intended to open the economy to foreign direct investment to secure the maximum benefits from globalization and liberalization. The recent reforms of public utilities and state monopolies had to be supplemented by greater competition in the market-place. He said that competition law applied to all firms operating in Zambia without any discrimination between national and foreign firms. One of the aims of the law was to monitor the competitive behaviour of transnational corporations with a view to ensuring that their actions did not abuse dominant positions of market power. He noted that the liberalization of foreign direct investment and the trade regime could open the door to restrictive business practices if competition law was not effectively enforced. He concluded by thanking UNCTAD for the technical support and training facilities extended to the Zambian Competition Commission.

16. The representative of **Georgia**, describing the history of the elaboration of competition legislation in his country, referred in particular to the adoption in 1996 of the Law on Monopoly Activity and Competition and to the creation of the State Antimonopoly Service, which consisted of three regional services and the central office and employed 150 people. The new law was under constant review and amendments were to be introduced. Georgian competition experts were benefiting from assistance and exchange of experience provided by a number of countries and agencies, in particular the OECD, the

United States Agency for International Development (USAID) and UNCTAD, the latter having held a competition seminar in Tbilisi in 1998. He expressed the hope that this assistance would continue and that the discussions in UNCTAD would permit better use of experiences acquired in the area of competition.

17. The representative of **Malta** informed the meeting that a new competition draft law had been introduced in his country in 1995. He said that the Government was in the process of creating an autonomous agency that would deal with both consumer protection and competition policy. The law was to be considered by Parliament in September 1998.

18. The representative of **Ukraine** stressed the importance for national economic development of UNCTAD's work on competition law and policy. One of the features of implementing competition policy in his country consisted of providing the Antimonopoly Committee with a full range of powers to achieve the goals of this policy. In addition to its other functions, the Committee was in charge of controlling privatization and demonopolization, excessive-price regulation, and controlling the elaboration of norms and regulations by the central and local government administration. With the implementation as from 1997 of the new law, a comprehensive system of carrying out competition policy had been created and every sector of the economy, including natural monopolies, had experienced the pressure of competition. New economic conditions and experience gained had made it possible to elaborate new draft laws on protection of economic competition and on natural monopolies. One of the most important problems in his country was the application of antimonopoly regulations to companies operating in more than one country, which required the elaboration of an appropriate mechanism. In conclusion, he informed the meeting that his office would organize, in cooperation with UNCTAD, a national and a regional seminar on competition law and policy scheduled to take place in May 1999.

19. The representative of the **Russian Federation** drew attention to the work of the State Antimonopoly Committee, which employed 2,000 people throughout the country and had prepared a significant number of highly qualified specialists working in other state agencies, companies and banks. He pointed to the importance of the intergovernmental policy of supporting competition. Economic ties with the former countries of the USSR had gradually diminished, but they could be restored on market economy principles. In this situation, competition policy would play a very important role, and he therefore expressed the hope that the role of the Competition Council of the countries of the Commonwealth of Independent States would be revived. Referring to regional agreements in the Russian Federation, he stressed the importance of competition law as a means of counteracting regional authorities trying to interfere in the area of trade and prevent free competition.

20. The expert from the **Union Douanière de l'Afrique Centrale** (UDEAC) expressed her appreciation to UNCTAD and to participating experts from other regions for organizing or contributing to the recent seminar for UDEAC countries held in Gabon. This would be followed by national seminars in each UDEAC country, thus helping to create a competition culture in the subregion and encouraging adoption or better implementation of competition laws. The subject of positive comity was particularly relevant to the UDEAC countries.

21. The representative of **Germany** referred to the amendments to the German competition law which had recently been adopted and would come into force in 1999.

22. The representative of the **Andean Community** recalled that the Andean Group had rules on competition when restrictive practices affected two or more member countries, and Decision 285 on free competition had been adopted in 1991. She thanked the European Union for cooperating with the Andean Community, and indicated that they were currently considering amendments to the 1991 rules, which so far did not include merger control. The issue of introducing merger controls, as well as eliminating anti-dumping and subsidies measures among member States of the Andean Group to replace them by competition rules, would shortly be discussed.

23. The representative of **Egypt** described the economic and legal reforms being undertaken in his country, which represented one of the largest markets in Africa. Until very recently, domestic state-owned enterprises, many of them in a dominant or monopolistic position, had been the main actors in the Egyptian economy. More recently, the country had introduced laws facilitating investment by foreign operators. A competition law was also being drafted. It would prohibit monopolistic practices detrimental to the national economy, and not simply the possession of a dominant position. A competition enforcement agency would be set up through a decision of the Ministry of Trade and Supply. Egypt was very grateful to UNCTAD for the contribution it was making to the complex task of adopting competition legislation.

24. The representative of **Gabon** expressed his appreciation to UNCTAD for organizing the seminar on the training of trainers held in Libreville in June 1998 as well as the other two training seminars, held in Cairo and Nairobi earlier in 1998. He informed the meeting about the amendments to the competition law in Gabon, which were being discussed in Parliament. He said that these reflected the country's changing economic situation and the reforms undertaken by his Government to accommodate the trade liberalization and privatization programme under way in Gabon. He appealed to UNCTAD to assist his country and other interested countries in adopting a flexible approach in their attempts to promote competitive markets. He renewed his Government's offer to host other national and regional training events.

25. In his statement the representative of **Japan** referred to recent reforms of the exemption systems of his country's Antimonopoly Act (AMA). He said the AMA prohibited the formation of cartels by firms and trade associations, although certain cartels were permitted under exceptional circumstances. He continued that the Japan Fair Trade Commission believed that the exemptions systems of the AMA should be limited to the absolute minimum, with a view to greater utilization of market forces, and had actively pursued that reform for a long time. He added that the exemption systems of the AMA based on industrial laws had been reformed through Cabinet decisions. Thirty-five systems under 20 laws had been abolished through the Omnibus Act which was passed by the Diet on 13 June 1997 and came into effect on 20 July of that year. Amendments had already been implemented or were scheduled for other six systems under six laws. The exempted cartel systems based on the AMA and those based on the AMA Exemption Act were also targeted for reform by Cabinet decisions.

Chapter I

CONSIDERATION OF TEXTS AND PROCEEDINGS AT THE CLOSING PLENARY

A. Consideration of texts

26. At its closing plenary meeting, on 31 July 1998, the Intergovernmental Group of Experts adopted the draft agreed conclusions on agenda item 3(i) and 3(ii), circulated in document TD/B/COM.2/CLP/L.2 (for the text of the agreed conclusions, see annex I).

B. Closing statement

27. The representative of the **World Trade Organization** (WTO) congratulated the Chairperson on his successful conduct of the meeting. For the information of delegates, he briefly reviewed the mandate and work programme of the WTO Working Group on the Interaction between Trade and Competition Policy and the topics that had been discussed in the Working Group so far. He noted that there had been extensive cooperation between the secretariats of UNCTAD and the WTO on competition policy matters over the past year. In this regard, he referred to the UNCTAD secretariat's role in co-sponsoring (with the WTO and the World Bank) two symposia on competition policy issues that had been held at the WTO during the year. The symposia had been attended by a large number of delegates and had generated considerable interest. In addition, the WTO secretariat had been pleased to participate, by invitation, in two regional seminars on competition policy - in Cairo and Libreville - that had been sponsored by UNCTAD (in the latter case, jointly with UDEAC). These seminars had been useful and well organized. He looked forward to further cooperation between the secretariats of the WTO and UNCTAD on competition policy issues in the coming year.

Chapter II

ORGANIZATIONAL MATTERS

A. Opening of the session

28. The first session of the Intergovernmental Group of Experts on Competition Law and Policy was opened on 29 July 1998 by Mr. G. Lipimile (Zambia), Chairperson of the 1997 Expert Meeting on Competition Law and Policy.

B. Election of officers

(Agenda item 1)

29. At its opening plenary meeting, on 29 July 1998, the Intergovernmental Group of Experts elected its officers, as follows:

Chairperson:	Mr. F. Souty (France)
Vice-Chairperson-cum-Rapporteur:	Mr. D.J. Pathirane (Sri Lanka)

C. Adoption of the agenda and organization of work

(Agenda item 2)

30. Also at the opening plenary meeting, the Intergovernmental Group of Experts adopted the provisional agenda for the session (TD/B/COM.2/CLP/1), as follows:

1. Election of officers
2. Adoption of the agenda and organization of work
3. (i) Consultations on competition law and policy, including the Model Law and studies related to the provisions of the Set of Principles and Rules

   (ii) Work programme, including technical assistance, advisory and training programmes on competition law and policy
4. Provisional agenda for the next session
5. Adoption of the report of the Intergovernmental Group of Experts

D. Documentation

31. For its consideration of the substantive agenda item (item 3) the Intergovernmental Group of Experts had before it three documents prepared by the secretariat: "Empirical evidence of the benefits from applying competition law and policy principles to economic development in order to attain greater efficiency in international trade and development" (TD/B/COM.2/EM/10/Rev.1), "Review of technical assistance, advisory and training programmes on competition law and policy" (TD/B/COM.2/CLP/2) and "Experience gained so far with international cooperation on competition policy issues and the mechanisms used" (TD/B/COM.2/CLP/3).

E. Provisional agenda for the second session of the Intergovermental Group of Experts

(Agenda item 4)

32. At its closing plenary meeting, on 31 July 1998, the Intergovernmental Group of Experts approved the draft provisional agenda for its second session (for the text of the provisional agenda, see annex II).

F. Adoption of the report of the Intergovernmental Group of Experts

(Agenda item 5)

33. Also at its closing plenary meeting, on 31 July 1998, the Intergovernmental Group of Experts adopted the draft report on its session (TD/B/COM.2/CLP/L.1), subject to any amendments that delegations might wish to make, and authorized the Rapporteur to complete the final report as appropriate.

Annex I

AGREED CONCLUSIONS ADOPTED BY THE INTERGOVERNMENTAL GROUP OF EXPERTS ON COMPETITION LAW AND POLICY AT ITS FIRST SESSION

The Intergovernmental Group of Experts on Competition Law and Policy,

Recalling the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices and the Third United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices,

Taking note of General Assembly resolution 52/182 of 18 December 1997, which endorsed the change of name of the Intergovernmental Group of Experts on Restrictive Business Practices to the Intergovernmental Group of Experts on Competition Law and Policy, and the convening of a fourth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices,

Taking note with appreciation of the cooperation taking place with the World Trade Organization and other organizations active in the field of competition law and policy,

Taking note also with appreciation of the documentation prepared by the UNCTAD secretariat for the present meeting,

1. Reaffirms the fundamental role of competition law and policy for sound economic development; recognizes the importance of strengthened international cooperation in the area of competition law and policy; and in this connection recommends the continuation of the important and useful work programme being carried out on competition law and policy issues within the UNCTAD intergovernmental machinery, which has the active support and participation of the competition law and policy authorities of member States;

2. Recalls that the Intergovernmental Group of Experts on Competition Law and Policy has been able to mobilize a high level of participation of experts and practitioners from capitals, which has allowed it to discuss technical and policy issues in an informal and constructive setting. These working methods have enabled the Intergovernmental Group of Experts to pursue its objectives of clarifying and elucidating principles, concepts and policy issues concerning the formulation and enforcement of competition law and policy. The exchange of experiences and information by member States, in particular during the informal consultations of the Intergovernmental Group of Experts, continues to contribute to a better understanding of the issues concerned, capacity-building for individual countries and the promotion of international cooperation in this area;

3. Invites the Secretary-General of UNCTAD to continue cooperation with the World Trade Organization and other organizations working in the area of competition law and policy;

4. Invites the Secretary-General of UNCTAD, in view of the fact that the 1999 session of the Intergovernmental Group of Experts will be the last meeting of the Group before the Fourth Review Conference in 2000, to prepare a preliminary assessment of the operation of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices since the Third Review Conference;

5. Takes note with appreciation of the voluntary financial and other contributions received from member States and invites all member States to assist UNCTAD on a voluntary basis in its technical cooperation activities by providing experts, training facilities or financial resources; requests the UNCTAD secretariat to pursue its technical cooperation activities within the available resources, taking into account the deliberations and consultations

that took place at the present session; and invites the Secretary-General of UNCTAD to explore the feasibility of supporting training and capacity-building on a regional basis within the available resources;

6. Recommends that the consultations at the next meeting of the Intergovernmental Group of Experts should focus on the following topics:

(a) The relationship between the competition authority and relevant regulatory agencies, especially in respect of the privatization and demonopolization processes;

(b) International merger controls, in particular where they have effects in developing countries; and

(c) The creation of a culture of competition;

7. Requests the UNCTAD secretariat to prepare for consideration by the next meeting of the Intergovernmental Group of Experts:

(a) A report on the experiences gained so far with international cooperation on competition policy issues and the mechanisms used, taking into account commentary and information to be received from member States by 31 January 1999;

(b) An updated review of technical assistance, taking into account the information to be submitted by member States and international organizations no later than 31 January 1999; and

(c) A preliminary report on how competition policy addresses the exercise of intellectual property rights;

8. Requests the secretariat to continue to publish the following documents on a regular basis and to make them available on the Internet:

(i) Further issues of the Handbook on Competition Legislation, including regional and international instruments;

(ii) A revised version of the Commentary to the Model Law, taking into account in particular new trends in merger control;

(iii) An updated version of the Directory of Competition Authorities; and

(iv) An information note on recent important competition cases, with special reference to competition cases involving more than one country, and taking into account information to be received from member States.

Annex II

PROVISIONAL AGENDA FOR THE SECOND SESSION OF THE INTERGOVERNMENTAL GROUP OF EXPERTS ON COMPETITION LAW AND POLICY

1. Election of officers

2. Adoption of the agenda and organization of work

3. (i) Consultations on competition law and policy, including the Model Law and studies related to the provisions of the Set of Principles and Rules

   (ii) Work programme, including technical assistance, advisory and training programmes on competition law and policy and preparations for the Fourth UN Conference to Review All Aspects of the Set of Principles and Rules

4. Provisional agenda for the Fourth Review Conference

5. Adoption of the report of the Intergovernmental Group of Experts

Annex III

ATTENDANCE *

1. Experts from the following States members of UNCTAD attended the meeting:

Angola
Argentina
Bangladesh
Belarus
Belgium
Bolivia
Brazil
Burundi
Chile
China
Costa Rica
Croatia
Cuba
Czech Republic
Democratic Republic of the Congo
Dominican Republic
Ecuador
Egypt
Ethiopia
France
Gabon
Georgia
Germany
Guatemala
Hungary
India
Indonesia
Iran (Islamic Republic of)
Italy
Japan
Kenya
Lebanon
Madagascar
Malaysia
Malta
Mauritius
Mexico
Morocco
Namibia
Netherlands
Nigeria
Norway
Pakistan
Paraguay
Peru
Philippines
Poland
Portugal
Republic of Korea
Romania
Russian Federation
Senegal
Singapore
Slovakia
South Africa
Spain
Sri Lanka
Sudan
Sweden
Switzerland
Thailand
Tunisia
Turkey
Ukraine
United Kingdom of Great Britain and Northern Ireland
United Republic of Tanzania
United States of America
Venezuela
Yemen
Zambia
Zimbabwe

2. The European Community was also represented.

3. The following intergovernmental organizations were represented at the meeting:

Andean Community
Arab Labour Organization
Central African Customs and Economic Union
European Free Trade Association
Organization of African Unity

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* For the list of participants, see TD/B/COM.2/CLP/INF.1.

4. The following specialized agencies and related organization were represented at the meeting:

International Monetary Fund
International Telecommunication Union
World Intellectual Property Organization
World Trade Organization

5. The International Trade Centre UNCTAD/WTO was represented at the meeting.

6. The following non-governmental organizations were represented at the meeting:

General Category

International Federation of Pharmaceutical Manufacturers Associations
World Federation of United Nations Associations

Special Category

International Centre for Trade and Sustainable Development